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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,908	01/11/2002	Robert Russo	2103461-991100	7256

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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/043,908	Applicant(s) RUSSO ET AL.	
	Examiner James N Smalley	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-35 is/are allowed.
- 6) ☒ Claim(s) 1, 6-11, 13-16, 18, 19, 24-30 and 32 is/are rejected.
- 7) ☒ Claim(s) 2-5, 12, 17, 20-23 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claim Objections

1. Claims 3-5, 21-23, objected to because of the following informalities: They contain the phrase "and the at least." Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1, 6-11, 13-16, 18, 19, 24-30 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Waller 390.

Waller 390 discloses a lid for a beverage container/lid for covering a drinking cup containing a liquid 10, comprising a top wall having a generally circular periphery, an annular sidewall 28 downwardly depending from the top wall periphery, the lid including a drinking opening/groove 60 formed adjacent to the periphery, a regulator valve formed under the drinking opening, the regulator valve including: a first sidewall structure downwardly depending from the lid adjacent to the drinking opening and terminating in a first bottom wall, and a plurality of apertures/openings 20 formed in at least one of the first sidewall structure and the first bottom wall, wherein any of the plurality of apertures formed in the first sidewall structure are

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positioned in an opposing manner (*Examiner notes "opposing" reads on the openings of Waller 390 as the openings are disposed along a curved surface, therefore, they oppose each other*), the plurality of apertures having a size that is smaller than that of the drinking hole, the drinking opening being formed in the top wall, the annular sidewall including an annular recess/resilient annular gripping portion 32 for receiving a rim of the cup in a liquid tight manner, the lid further comprising a wave-breaker recess/barrier 54 formed in the top wall having a sidewall that extends downwardly, wherein the wave-breaker recess sidewall includes a first portion facing away from the regulator valve, and wherein the recess sidewall second portion is non-linear for reflecting waves of the liquid away from the regulator valve, wherein the wave-breaker recess sidewall first portion faces but is separated from the annular sidewall to form a channel therebetween, and wherein the regulator valve is disposed in the channel (*Examiner notes the first face reads as the portion of the sidewall that is closest to and adjacent to the regulator valve. This sidewall first portion faces the annular sidewall looking through the regulator valve, thereby creating a channel wherein the regulator valve is disposed therebetween*), wherein the recess sidewall second portion as one of a convex and a concave shape, the wave-breaker recess extending downwardly further from the periphery than the regulator valve.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 14-16, rejected under 35 U.S.C. 102(b) as being anticipated by Clements 569.

Clements 569 discloses a lid for covering a drinking cup containing a liquid 10, comprising a top

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wall/rim 40 having a generally circular periphery, an annular sidewall 24 downwardly depending from the top wall periphery, the lid including a drinking opening 20 formed adjacent to the periphery, a wave-breaker recess formed in the top wall having a sidewall that extends downwardly, wherein the wave-breaker recess sidewall includes a first portion 44 facing toward the drinking opening and a second portion 42 facing away from the drinking opening, and wherein the recess sidewall second portion is non-linear for reflecting waves of the liquid away from the drinking opening, wherein the wave-breaker recess sidewall first portion faces but is separated from the annular sidewall to form a channel therebetween, and wherein the regulator valve is disposed in the channel, the recess sidewall second portion having one of a convex and a concave shape.

6. Claims 1, 6-8, 28 rejected under 35 U.S.C. 102(b) as being anticipated by McFarland 372. McFarland 372 discloses a lid for covering a drinking cup containing a liquid/cap for hot beverage cup 10, comprising a top wall 24 having a generally circular periphery, an annular sidewall 22 downwardly depending from the top wall periphery (at 26), the lid including a drinking opening/depression 28 formed adjacent to the periphery, a regulator valve formed under the drinking opening, the regulator valve including: a first sidewall structure 30 downwardly depending from the lid adjacent to the drinking opening and terminating in a first bottom wall/floor 36, and a plurality of apertures/slots 38 formed in at least one of the first sidewall structure and the first bottom wall, wherein any of the plurality of apertures formed in the first sidewall structure are positioned in an opposing manner (*Examiner notes "opposing" reads on the openings of McFarland 372 as the slots are disposed along a curved surface, therefore, they oppose each other*), the plurality of apertures having a size that is smaller than that of the

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drinking hole, the drinking hole being formed in the top wall, the annular sidewall including an annular recess 14/20 for receiving a rim of the cup in a liquid tight manner.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 6-11, 13-16, 18, 19, 24-30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clements 569 as applied to claims 14-16 above and in view of Waller 390.

Clements 569 does not disclose a regulator valve disposed under the drinking opening or a plurality of inhibitor recesses formed in the top.

Waller 390 discloses a lid for a beverage container having a regulator valve formed under the drinking opening, the regulator valve including: a first sidewall structure downwardly depending from the lid adjacent to the drinking opening and terminating in a first bottom wall, and a plurality of apertures/openings 20 formed in at least one of the first sidewall structure and the first bottom wall, wherein any of the plurality of apertures formed in the first sidewall structure are positioned in an opposing manner, and includes an inhibitor recess/barrier 54 formed in the top wall that downwardly extends into the channel for blocking waves of the liquid traveling along the channel (see col. 5, lines 9-12 for the explanation of the fluid-diverting benefit of the barrier).

It would have been obvious to one having ordinary skill in the art to modify the lid of Clements 569 to provide a regulator valve and barrier. One having ordinary skill in the art would

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have been motivated to make such a modification so as to obtain the benefit of greater spill-resistance.

Allowable Subject Matter

9. Claims 33-35 allowed over prior art.
10. Claims 2-5, 12, 17, 20-23 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 308-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/

JNS
November 18, 2002



Stephen K. Cronin
Primary Examiner